

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**DEANNA MICHELE COBB,
Grievant,**

v.

Docket No. 2019-0260-DHHR

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES/
BUREAU FOR CHILD SUPPORT ENFORCEMENT AND
DIVISION OF PERSONNEL,
Respondents.**

DECISION

Grievant, Deanna Michele Cobb, is employed by Respondent, Department of Health and Human Resources (“DHHR”) within the Bureau for Child Support Enforcement (“BCSE”). On August 7, 2018, Grievant filed this grievance against Respondent stating, “Following the audit my position was lowered from Supervisor I to Child Support Specialist II. The Supervisor I classification already did not account for the duties relating to the Safeguard Program therefore the child support specialist II classification is also inaccurate.” For relief, Grievant seeks “[t]o be placed in a classification that has the authority to ensure the agency’s compliance with safeguard standards and procedures per IRS Publications 1075.”

By *Notice of Level 1 Waiver* dated August 24, 2018, Respondent waived the grievance to level two. By order entered August 31, 2018, the Division of Personnel (“DOP”) was joined as a necessary party. Following mediation, Grievant appealed to level three of the grievance process on December 13, 2018. A level three hearing was held on April 23, 2019, before the undersigned at the Grievance Board’s Charleston, West

Virginia office. Grievant appeared *pro se*¹. Respondent DHHR was represented by David Alter and by counsel, Brandolyn N. Felton-Ernest, Assistant Attorney General. Respondent DOP appeared by Wendy Campbell and by counsel, Karen O'Sullivan Thornton, Assistant Attorney General. This matter became mature for decision on May 22, 2019, upon final receipt of the parties' written Proposed Findings of Fact and Conclusions of Law ("PFFCL"). Respondent DHHR elected to file *Department's Position Statement* in lieu of PFFCL.

Synopsis

Grievant is employed by Respondent DHHR within the Bureau for Child Support Enforcement as a part-time Child Support Supervisor 1. Respondent Division of Personnel reallocated Grievant's position to a Child Support Specialist 2. Grievant asserts the position should remain classified as a Child Support Supervisor 1 or should be reallocated to a Child Support Specialist 3. Grievant failed to prove the classifications she sought were the best fit or that Respondent Division of Personnel's reallocation of her position was arbitrary and capricious. Accordingly, the grievance is denied.

The following Findings of Fact are based upon a complete and thorough review of the record created in this grievance:

Findings of Fact

1. Grievant is employed by Respondent DHHR within the Bureau for Child Support Enforcement as a part-time Child Support Supervisor 1.

¹ For one's own behalf. BLACK'S LAW DICTIONARY 1221 (6th ed. 1990).

2. During its review of another position, Respondent DOP determined there appeared to be some overlap in the organization chart for the agency so requested a Position Description Form (“PDF”) for the position Grievant occupied, among others.

3. The PDF was submitted to Respondent DOP on March 1, 2018.

4. On April 24, 2018, Respondent DOP determined that the position should be allocated to the Child Support Specialist 2 classification.

5. Respondent DHHR and Grievant were notified of the reallocation decision by letter dated April 27, 2018. The review of the position found the duties to be as follows: “1) coordinate the Bureau’s IRS Safeguard On-site Review and maintain reports of resulting findings; 2) maintain the IRS Safeguard Security Report (SSR) which is a requirement for all facility types that receive store and utilize federal tax information (FTI); and 3) conduct routine internal inspections to verify agency locations are properly protecting FTI using methods as set forth by the IRS Safeguards Program. The stated reason for the reallocation was that the position did not meet the definition of “supervisor” as the position had no supervisory responsibility and that the best fit for the position was a Child Support Specialist 2 as the classification states, “Under limited supervision, performs full-performance level case management work in child support enforcement. Manages a full caseload in providing services of the Bureau for Child Support Enforcement.”

6. Grievant appealed the classification determination stating that, at the least, the position should be classified as a Child Support Specialist 3.

7. In response to the appeal, Respondent DOP conducted an on-site job audit of the position on June 1, 2018, during which Grievant and her supervisor were provided

the opportunity to present additional information about the job duties and responsibilities of the position.

8. After a review of the request for reconsideration and the results of the job audit, Respondent DOP again determined the appropriate classification for the position is Child Support Specialist 2 and not Child Support Specialist 3.

9. Grievant and Respondent DHHR were notified of the determination by letter dated July 26, 2018.

10. The classification specification for Child Support Specialist 2 states, in pertinent part, as follows:

Nature of Work

Under limited supervision, performs full-performance level case management work in child support enforcement. Manages a full caseload in providing services of the Bureau for Child Support Enforcement. Performs related work as required.

Distinguishing Characteristics:

Under limited supervision, provides full-performance child support services. Employees assigned to positions at this level will have more independence of action and will have successfully completed a one-year probationary period as a Child Support Specialist 1. The Child Support Specialist 2 will interact with a variety of professional practitioners in the legal community, as well as other agencies. The Child Support Specialist 2 is distinguished from the Child Support Specialist 3 by the complexity of assignments.

Examples of Work

- Has the knowledge and abilities to manage a caseload in the area of child support enforcement.
- Familiar with agency policy and state and federal law.
- Locates parents, assets, and sources of income.
- Calculates the child support formula.
- Attends hearings to assist legal staff or give testimony regarding specific cases.
- Completes application for services, explains policy as it relates to cases.

- Researches legal sources such as statutes, court opinions, rules and regulations.
- Drafts complaints and other legal documents for use by the BCSE Attorney.
- May direct clerical personnel in the preparation of legal documents for BCSE Attorney.
- Compiles case information by reviewing public documents, interviewing customers or gathering information from other agencies.
- Prepares and maintains case files for the BCSE Attorney.
- Prepares summaries and reports, as needed.
- Evaluates cases to determine appropriate legal and administrative actions to recommend to the BCSE Attorney, in compliance with state and federal laws.
- Handles routine and moderately difficult customer service inquiries.
- Composes routine correspondence and assists supervisors with complex correspondence.
- Maintains interviewing techniques and skills.
- Maintains confidentiality of information.

11. The classification specification for Child Support Specialist 3 states, in pertinent part, as follows:

Nature of Work

Under limited supervision, performs advanced level case management work in child support enforcement. Employees at this level perform advanced level work as a lead worker in the regional offices with the highest difficulty and complex cases such as interstate, foster care, and disputed paternity, and unusually sensitive or complex cases and for lead worker positions in the above Central Office Units with subordinate Child Support Specialist I and II positions. Will mentor and train other Child Support Specialists and be a back-up to the supervisor when they are out of the office. Performs related work as required.

Distinguishing Characteristics:

Employees in this classification will have previously served as a Child Support Specialist 1 and 2. Under limited supervision, a Child Support Specialist 3 provides advanced level child support services. Employees assigned to positions at this level will have greater independence of action. Interacts with a variety of professional practitioners in the legal community, as well as other agencies. Must be able to assess the

customer's needs and the posture of the case and determine appropriate course of action. Performs advanced level work with the highest difficulty and complex cases such as interstate, foster care, and disputed paternity. Will serve as a lead worker and will mentor and train other Child Support Specialist and be a back-up to the supervisor when they are out of the office.

Examples of Work

- Has the knowledge and abilities to manage a caseload in the area of child support enforcement.
- Familiar with agency policy and state and federal law.
- Locates parents, assets, and sources of income.
- Calculates the child support formula.
- Attends hearings to assist legal staff or give testimony regarding specific cases.
- Completes application for services, explains policy as it relates to cases.
- Researches legal sources such as statutes, court opinions, rules and regulations.
- Drafts complaints and other legal documents for use by the BCSE Attorney.
- May direct clerical personnel in the preparation of legal documents for BCSE Attorney.
- Compiles case information by reviewing public documents, interviewing customers or gathering information from other agencies.
- Prepares and maintains case files for the BCSE Attorney.
- Prepares summaries and reports, as needed.
- Evaluates cases to determine appropriate legal and administrative actions to recommend to the BCSE Attorney, in compliance with state and federal laws.
- Handles customer service inquiries of all levels of difficulty.
- Composes correspondence of all levels of complexity.
- Assists BCSE Attorney with complex litigation.
- Maintains interviewing techniques and skills.
- Maintains confidentiality of information.
- Mentors/trains Child Support Specialist I and II.
- Participates in regional or statewide projects.
- Demonstrates advanced ability to master the technical aspects of the Child Support Enforcement's automated system.
- Engages in community outreach.
- May serve as a back-up for the supervisor.

12. The classification specification for Child Support Supervisor 1 states, in pertinent part, as follows:

Nature of Work

Under limited supervision, performs full performance supervisory work overseeing a section of employees engaged in technical work requiring advanced training. Work is reviewed by superiors through results produced or information obtained in meetings. Performs analytical assessments of the highest complexity with regard to child support case processing and/or financial data to determine compliance with federal and state legislation and BCSE policy. Responsible for ensuring the accuracy and completeness of subordinate staff's work product. Trains subordinate staff and other staff with respect to changes in federal, state, and BCSE policy concerning case processing and distribution and allocation and guidelines and procedures. Interprets and analyzes relevant policy relating to case processing and to financial distribution and allocation into understandable processes to be incorporated into subordinate staff's procedures. Performs reviews of cases which may be of a sensitive nature. Oversees and directs the work of subordinate staff. Maintains workflow and reviews to ensure the timely delivery of quality customer service to a broad spectrum of BCSE customers. May represent the agency before committees, field offices and to customers. Researches other agencies' databases to determine accurate data and history for accurate case management for the Bureau. Performs other work as required.

Distinguishing Characteristics:

Is distinguished by the complex nature of the work product being reviewed and the level of collateral work assigned to the position. The nature of the work supervised is typically of a more technical nature as opposed to other supervisory titles. Would be a working supervisor performing related work of a more advanced level than those supervised. Assist subordinate staff and managerial staff to resolve complex problems relative to individual case processing and respective financial distribution.

Examples of Work

- Plan, organizes, directs and evaluates processes; designs and monitors workflow and operational processes.

- Establishes controls, such as quotas and quality assurance procedures, to ensure that work is properly completed and deadlines are met.
- Reviews cases to determine priority levels and assigns appropriately.
- Reviews completed and/or outgoing audits to determine employee's training needs and act on information accordingly.
- Reviews and approves requests for checks to customers (manual and computer generated).
- Prepares and maintains records and reports for superiors to document activities and to evaluate the performance of subordinates.
- Assesses staff training needs, development and professional growth, and recommends incentives or corrective action, as appropriate.
- Train employees in work methods, procedures, and office policies.
- Interprets and applies departmental policies and regulations for subordinate staff and others.
- Provides input in changes to policy.
- Interprets and applies departmental policies and regulations for employees.
- Evaluates and maintains records for work quality of staff.
- Assists staff, including supervisory personnel, with completing audits.
- Confer with policy coordinators, trainers, managers, directors, General Counsel, and the Commissioner with solving case problems of a complex nature.
- Plans and conducts unit meetings and individual staff conferences in order to promote staff development and professional growth.
- Monitors, evaluates and assists the technical staff in development of enhanced programming that pertain to the Child Support Enforcement's automated system.
- Assists subordinates in overall operations of programs and policies.
- Answers questions and solves problems of a complex nature for, and with, subordinates.
- Revises work procedures to align with changes in state and federal laws and programs.
- Recruits, interviews, hires and trains professional staff, as needed.
- Approves attendance reports, leave and travel requests, and work schedules in accordance with personnel policies.
- Responds to grievance issues within the mandated time frames.

- Performs employee performance appraisals, recommends disciplinary actions and monitors work schedules.
- Counsel employees.
- Ensures that equipment, supplies and materials are available to complete work.
- May act as backup manager in immediate supervisor's absence.
- Based on assignment, may have daily contact with other entities, such as other state agencies, employers, attorneys, customers, etc.

13. Respondent DOP's Pay Plan policy defines the following relevant terms as follows:

Lead Work/Lead Worker - This is a level of work at which an incumbent is assigned the ongoing responsibility of scheduling and/or reviewing the work of other co-workers and guiding and training them while performing identical or similar kinds of work.

Performance Levels:

Full-Performance Level. - This level can be characterized by the performance of a full range of duties relative to the work in the class series. Incumbent has some latitude for independent judgment and may vary work methods and procedures, but usually within prescribed parameters. Work is usually performed under general supervision. Work is frequently of some variety and incumbent may set priorities.

Advanced Level. - This level is assigned to duties and responsibilities which are complex, difficult and varied, relative to the work in the class series. Work requires the development and adoption of non-standard procedures and has more impact and consequence of error than the full performance level. Work may be performed under limited supervision or under limited direction. Incumbent possesses considerable latitude to accomplish tasks; may include lead worker duties.

Supervisor - Formally delegated responsibility for planning, assigning, reviewing, and approving the work of three or more full-time employees or four or more .83 full-time equivalent

Seasonal employees which includes initiating disciplinary actions, approving leave requests, conducting performance evaluations, and recommending salary increases.

14. In completing the PDF, Grievant did not follow the instructions in the document to describe “what you are actually doing in your job” by using “I” statements with a verb, object, and purpose. Although the “Essential Duties” portion of the PDF Grievant completed is lengthy, the language used is mostly passive, descriptive of the Safeguard procedures rather than Grievant’s work, or very general.

15. Grievant’s working title is “Tax Offset Coordinator.”

16. Agencies utilizing federal tax information are subject to oversight by the federal Office of Safeguards and are required to comply with the guidelines, reporting, and submit to the review process of that office.

17. Grievant is the point of contact for the Office of Safeguards. Grievant maintains the Safeguard Security Report, Corrective Action Plan, and Safeguard Review Report documents. Grievant tracks deficiency findings from the Office of Safeguards, requests information from various persons both inside and outside of the agency in response to findings of deficiency, tracks the corrective actions to be taken, and eventually updates the official documents with this information. Grievant also scheduled and participated in meetings regarding the deficiency findings. Grievant’s work on the findings is reviewed by BCSE Commissioner Garrett Jacobs or one of the agency’s attorneys.

18. Grievant’s duties include casework for tax offset and passport denial and creating and working reports for adjustment and reversal of child support collections.

19. Grievant does not supervise any employees, provide training, or serve as a lead worker.

20. Since the time of the classification decision, some of the duties of the position have changed.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. W. VA. CODE ST. R. § 156-1-3 (2018). “The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not.” *Leichliter v. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993), *aff'd*, Pleasants Cnty. Cir. Ct. Civil Action No. 93-APC-1 (Dec. 2, 1994). Where the evidence equally supports both sides, the burden has not been met. *Id.*

The Division of Personnel has discretion in performing its duties provided it does not exercise its discretion in an arbitrary or capricious manner. See *Bonnett v. West Virginia Dep't of Tax and Revenue and Div. of Pers.*, Docket No. 99-T&R-118 (Aug 30, 1999), *aff'd* Kan. Co. Cir. Ct. Docket No. 99-AA-151 (Mar. 1, 2001). The role of the Grievance Board is to review the information provided and assess whether the actions taken were arbitrary and capricious or an abuse of discretion. See *Kyle v. W. Va. State Bd. of Rehab.*, Docket No. VR-88-006 (Mar. 28, 1989). An action is recognized as arbitrary and capricious when “it is unreasonable, without consideration, and in disregard of facts and circumstances of the case.” *State ex rel. Eads v. Duncil*, 196 W. Va. 604 at 614, 474 S.E.2d 534 at 544 (1996) (citing *Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)).

When a grievant alleges she has been misclassified, she must prove by a preponderance of the evidence that the work she is doing is a better fit in a different classification than the one in which his position is currently classified. See *Hayes v. W. Va. Dep't of Natural Res.*, Docket No. NR-88-038 (Mar. 28, 1989); *Oliver v. W. Va. Dep't of Health & Human Res./Bureau for Child Enforcement*, Docket No. 00-HHR-361 (Apr. 5, 2001). In order to determine the best fit, the class specifications at issue must be analyzed. "In determining the class to which any position shall be allocated, the specifications for each class shall be considered as a whole." W. VA. CODE ST. R. § 143-1-4.4(b). Further. "[t]he fact that all of the actual tasks performed by the incumbent of a position do not appear in the specifications of a class to which the position has been allocated does not mean that the position is necessarily excluded from the class, nor shall any one example of a typical task taken without relation to the other parts of the specification be construed as determining that a position should be allocated to the class." W. VA. CODE ST. R. § 143-1-4.4(d). Division of Personnel class specifications are to be read in pyramid fashion, i.e., from top to bottom, with the different sections to be considered as going from the more general/more critical to the more specific/less critical. *Captain v. W. Va. Div. of Health*, Docket No. 90-H-471 (Apr. 4, 1991). For these purposes, the "Nature of Work" section of a classification specification is its most critical section. See generally, *Dollison v. W. Va. Dep't of Empl. Security*, Docket No. 89-ES-101 (Nov. 3, 1989), *aff'd*, Kan. Co. Cir Ct. Docket No. 89-AA-220 (Jan. 10, 1991).

As a preliminary matter, the unit in which the position resides underwent a reorganization after the classification determination at issue was made. As a result of the reorganization, the duties of the position have changed. However, this grievance must

be decided based on the duties as they existed at the time of the classification determination. If Grievant believes the new duties would support a reallocation to a different classification, she would be required to request a new classification determination by the Division of Personnel.

Grievant appears to alternatively argue that the position should remain classified as a Child Support Supervisor 1 or be classified as a Child Support Specialist 3. Although Grievant also mentioned the Health and Human Resources Program Manager 1 and Health and Human Resources Specialist, Senior classifications at the level three hearing, those classification specifications were not entered into evidence and Grievant made no argument respective to those classifications in her PFFCL. Therefore, the Health and Human Resources Program Manager 1 and Health and Human Resources Specialist, Senior classifications will not be analyzed herein.

Despite repeated explanation from the undersigned during the level three hearing of the type of testimony needed to support her claim and careful cross examination by Respondent DOP, Grievant struggled to explain her actual duties in the position. It is unclear why Grievant had such difficulty although Grievant stated that she has experienced serious health concerns that have required changes in her duties and a reduction to part-time employment, which she also stated impacts her memory. Regardless, Grievant did not indicate at any time that she was impaired or otherwise unable to proceed with her grievance. In deference to her issues with memory, Grievant could have chosen to present additional documentary evidence or the testimony of others, including her supervisor, but Grievant chose only to testify on her own behalf.

Grievant's testimony, exhibits, and PFFCL relate mostly to the purpose and requirements of the Office of Safeguards review process rather than Grievant's role relating to the process. The evidence that was presented regarding Grievant's actual duties was mostly conclusory in nature, rather than providing detail of the duties. Parts of Grievant's testimony, the documentary evidence, and Grievant's assertions in her PFFCL are also contradictory. In addition, Grievant's working title seems to suggest that her duties are different than what she asserts as her title is "Tax Offset Coordinator" but, according to the PDF, her duties regarding tax offset are minor. Yet, when asked to detail the duties of a typical day on cross examination, the only somewhat specific examples of work Grievant gave were her duties related to tax offset, passport denial, and reports for adjustment and reversal of child support collections, not the Office of Safeguards review process. As a result, the record does not contain a clear picture of Grievant's actual duties.

As an agency that receives federal tax information, the BCSE is required to safeguard that information. The Internal Revenue Service's Office of Safeguards is the federal agency responsible for ensuring the confidentiality of tax information through verification of compliance with safeguard requirements. It ensures this compliance with the publication of guidelines, required reporting, and an onsite review process. Agencies are required to comply with the guidelines, reporting, and submit to the review process. The review cycle is as follows: preliminary discussion with the point of contact, engagement letter to agency head, opening conference with agency head, on-site review, closing conference with agency head, final report submitted to agency head, Corrective Action Plan submitted by agency if any deficiencies found, and Safeguard Review Report

submitted by the agency and certified by the agency head. The agency is also required to report on their procedures through the Safeguard Security Report.

Grievant is the point of contact for the Office of Safeguards. BCSE Commissioner Garret Jacobs is the agency head. With the limited evidence Grievant provided regarding her specific duties, it appears Grievant maintains the Safeguard Security Report, Corrective Action Plan, and Safeguard Review Report documents. Grievant tracks deficiency findings from the Office of Safeguards, requests information from various persons both inside and outside of the agency in response to findings of deficiency, tracks the corrective actions to be taken, and eventually updates the official documents with this information. Grievant also scheduled and participated in meetings regarding the deficiency findings. Grievant's work on the findings is reviewed by Commissioner Jacobs or one of the agency's attorneys.

To prove that either the Child Support Supervisor 1 or the Child Support Specialist 3 is the best fit for her duties, Grievant must prove that she either supervises employees, trains employees, or serves as a lead worker. None of these three duties are supported by the evidence. Despite Grievant's assertion on the PDF and her PFFCL that she supervises employees, it is clear that Grievant does not. Grievant testified she only supervised employees "years ago." In her PFFCL, she admits that she does not "officially" supervise employees regarding disciplinary actions, leave approval, or performance evaluations but asserts that she "delegate[s] responsibility for planning, assigning, reviewing, and approving the work" of employees. This does not meet the definition of supervisor. Grievant failed to present evidence that she plans, assigns, reviews, or approves the work of employees but, even if she had, a supervisor must have

responsibility for initiating disciplinary actions, approving leave requests, conducting performance evaluations, and recommending salary increases, which Grievant does not. Therefore, as the primary characteristic of a Child Support Supervisor 1 is to supervise employees, this classification is clearly not proper for the position Grievant holds.

The evidence also does not support that Grievant provides training or serves as a lead worker. Grievant did not assert that she serves as a lead worker. Grievant provided no evidence that she is responsible for developing or conducting training, simply making the conclusory statement that she has trained employees. Further, in Grievant's testimony, regarding the training required for the agency's employees by the Office of Safeguards, Grievant testified only that she creates reports on which employees have not taken the training and then notifies the employee to take the training not that she trains the employees. Grievant also asserts she "trained" an employee of the Bureau for Children and Families, another bureau within DHHR, who holds a position similar to Grievant's position with the Bureau for Child Support Enforcement. While an employee of a sister agency might provide help and guidance to an employee in a similar position in another agency, that employee does not provide training as that word is used in the classification specifications. The Child Support Specialist 3 classification requires responsibility for training and serving as a lead worker. Therefore, the position cannot be classified as a Child Support Specialist 3.

While the Child Support Specialist 2 classification certainly does not appear to be a good fit based on the limited evidence of Grievant's duties that appear in the record, Grievant's duties clearly do not fit the classifications she asserts are the best fit. Ultimately, it is Grievant's burden to prove that another position is a better fit, not

Respondent DOP's burden to prove that its decision was proper. There is no evidence that Respondent DOP's decision was arbitrary and capricious as the proper procedures were followed and there is no question Grievant's duties do not fit the classifications she asserts are the best fit. Therefore, Grievant has failed to meet her burden of proof and the grievance must be denied.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. W. VA. CODE ST. R. § 156-1-3 (2018). "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993), *aff'd*, Pleasants Cnty. Cir. Ct. Civil Action No. 93-APC-1 (Dec. 2, 1994). Where the evidence equally supports both sides, the burden has not been met. *Id.*

2. The Division of Personnel has discretion in performing its duties provided it does not exercise its discretion in an arbitrary or capricious manner. *See Bonnett v. West Virginia Dep't of Tax and Revenue and Div. of Pers.*, Docket No. 99-T&R-118 (Aug 30, 1999), *aff'd* Kan. Co. Cir. Ct. Docket No. 99-AA-151 (Mar. 1, 2001).

3. The role of the Grievance Board is to review the information provided and assess whether the actions taken were arbitrary and capricious or an abuse of discretion. *See Kyle v. W. Va. State Bd. of Rehab.*, Docket No. VR-88-006 (Mar. 28, 1989). An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." *State ex rel. Eads*

v. Duncil, 196 W. Va. 604 at 614, 474 S.E.2d 534 at 544 (1996) (citing *Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)).

4. When a grievant alleges he has been misclassified, he must prove by a preponderance of the evidence that the work he is doing is a better fit in a different classification than the one in which his position is currently classified. See *Hayes v. W. Va. Dep't of Natural Res.*, Docket No. NR-88-038 (Mar. 28, 1989); *Oliver v. W. Va. Dep't of Health & Human Res./Bureau for Child Enforcement*, Docket No. 00-HHR-361 (Apr. 5, 2001).

5. "In determining the class to which any position shall be allocated, the specifications for each class shall be considered as a whole." W. VA. CODE ST. R. § 143-1-4.4(b). Further. "[t]he fact that all of the actual tasks performed by the incumbent of a position do not appear in the specifications of a class to which the position has been allocated does not mean that the position is necessarily excluded from the class, nor shall any one example of a typical task taken without relation to the other parts of the specification be construed as determining that a position should be allocated to the class." W. VA. CODE ST. R. § 143-1-4.4(d). Division of Personnel class specifications are to be read in pyramid fashion, i.e., from top to bottom, with the different sections to be considered as going from the more general/more critical to the more specific/less critical. *Captain v. W. Va. Div. of Health*, Docket No. 90-H-471 (Apr. 4, 1991). For these purposes, the "Nature of Work" section of a classification specification is its most critical section. See generally, *Dollison v. W. Va. Dep't of Empl. Security*, Docket No. 89-ES-101 (Nov. 3, 1989), *aff'd*, Kan. Co. Cir Ct. Docket No. 89-AA-220 (Jan. 10, 1991).

6. Grievant failed to prove the classifications she sought were the best fit or that Respondent Division of Personnel's reallocation of her position was arbitrary and capricious.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this decision. See W. VA. CODE § 6C-2-5. Neither the West Virginia Public Employees Grievance Board nor any of its administrative law judges is a party to such appeal and should not be so named. However, the appealing party is required by W. VA. CODE § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The civil action number should be included so that the certified record can be properly filed with the circuit court. See *also* W. VA. CODE ST. R. § 156-1-6.20 (2018).

DATE: August 21, 2019

Billie Thacker Catlett
Chief Administrative Law Judge